

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



AMINAH WALKER,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 724,

Respondent.

Case No. LA-CO-1449-E

PERB Decision No. 2220

November 16, 2011

Appearances: Aminah Walker, on her own behalf; Sonja J. Woodward, Attorney, for California School Employees Association & its Chapter 724.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Aminah Walker (Walker) from a Board agent's dismissal (attached) of an unfair practice charge. The charge alleged that the California School Employees Association & its Chapter 724 (CSEA) breached its duty of fair representation under the Educational Employment Relations Act (EERA).¹ The Board agent found that the charge failed to state a prima facie violation of the duty of fair representation.

The Board has reviewed the dismissal and the record in light of Walker's appeal, CSEA's response thereto, and the relevant law. Based on this review, we find the dismissal and warning letters to be well-reasoned, adequately supported by the record, and in accordance with applicable law. Accordingly, the Board adopts the dismissal and warning letters as the decision of the Board itself, supplemented by the discussion below.

¹ EERA is codified at Government Code section 3540 et seq.

DISCUSSION

Compliance with Requirements for Filing Appeal

Pursuant to PERB Regulation 32635(a),² an appeal from dismissal must:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

To satisfy the requirements of PERB Regulation 32635(a), the appeal must sufficiently place the Board and the respondent “on notice of the issues raised on appeal.” (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H (*State Employees Trades Council*); *City & County of San Francisco* (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent’s dismissal fails to comply with PERB Regulation 32635(a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381 (*Pratt*); *Lodi Education Association (Hudock)* (1995) PERB Decision No. 1124; *United Teachers - Los Angeles (Glickberg)* (1990) PERB Decision No. 846.) Likewise, an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635(a). (*Pratt*; *State Employees Trades Council*; *Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M; *County of Solano (Human Resources Department)* (2004) PERB Decision No. 1598-M.)

The appeal in this case consists solely of the following statement:

The **WARNING LETTER** dated April 12, 2011, contained inaccurate information and I would like to [sic] opportunity to provide proof to substantiate my claim. Attached are some of my

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

emails (71 pages) for your review. At this time, I am asking for an appeal on Unfair Practice Charge No. LA-CO-1449-E.

(Emphasis in original.)

The appeal fails to reference any portion of the Board agent's determination or otherwise identify the specific issues of procedure, fact, law or rationale to which the appeal is taken, the page or part of the dismissal to which appeal is taken, or the grounds for each issue. Thus, it is subject to dismissal on that basis. (*City of Brea* (2009) PERB Decision No. 2083-M.)

New Evidence and Allegations on Appeal

In her appeal, Walker presents new evidence that was not presented in the original charge or in an amended charge. "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (PERB Reg. 32635(b); see also *CSU Employees Union, SEIU Local 2579 (Kyrias)* (2011) PERB Decision No. 2175-H.) The Board has found good cause when "the information provided could not have been obtained through reasonable diligence prior to the Board agent's dismissal of the charge." (*Sacramento City Teachers Association (Ferreira)* (2002) PERB Decision No. 1503.)

On April 12, 2011, the Board agent issued a letter advising Walker that the charge failed to state a prima facie case and warning her that the charge would be dismissed unless she amended the charge to state a prima facie case. As set forth in the Board agent's May 18, 2011 letter dismissing the charge, although Walker requested and received an extension of time to file an amended charge, she failed to do so. Walker filed an appeal from dismissal on June 16, 2011. Attached to the appeal are documents provided for the first time on appeal that are either undated or bear dates that all predate the dismissal. The appeal provides no reason why they could not have been alleged in the original charge or in an amended charge. Thus, we do not find good cause to consider these new allegations and evidence.

ORDER

The unfair practice charge in Case No. LA-CO-1449-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Huguenin joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8387
Fax: (916) 327-6377



May 18, 2011

Aminah Walker

Re: *Aminah Walker v. California School Employees Association & its Chapter 724*
Unfair Practice Charge No. LA-CO-1449-E

DISMISSAL LETTER

Dear Ms. Walker:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on September 3, 2010. Aminah Walker (Walker or Charging Party) alleges that the California School Employees Association, Chapter 724 (CSEA or Respondent) violated the Educational Employment Relations Act (EERA or Act).¹

Charging Party was informed in the attached Warning Letter dated April 12, 2011, that the above-referenced charge did not state a prima facie case. Charging Party was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, she should amend the charge. Charging Party was further advised that, unless she amended the charge to state a prima facie case or withdrew it prior to April 22, 2011, the charge would be dismissed. On April 22, 2011, the undersigned Board Agent called Charging Party to discuss this charge. During this telephone conversation, in addition to a discussion of Charging Party's questions, Charging Party requested an extension of time until May 13, 2011, to file additional documents. The undersigned Board Agent requested that Charging Party mail an original letter to memorialize her request for an extension of time. Having not received an extension of time request letter or an amended charge, the undersigned Board Agent called Charging Party on May 4, 2011, to discuss the potential dismissal of her charge. During this telephone conversation Charging Party assured the undersigned Board Agent that she had mailed an extension of time request letter on May 3, 2011, and that she going to mail a proof of service later that day.

PERB has not received a request of extension of time letter, an amended charge, a request for withdrawal or any other correspondence, by mail or telephone, from Charging Party. Therefore, the charge is hereby dismissed based on the facts and reasons set forth in the April 12, 2011 Warning Letter.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

Right to Appeal

Pursuant to PERB Regulations,² Charging Party may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs, tit. 8, § 32635, subd. (a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs, tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs, tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs, tit. 8, § 32635, subd. (b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs, tit. 8, § 32135, subd. (c).)

Extension of Time

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs, tit. 8, § 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

M. SUZANNE MURPHY
General Counsel

By _____
Jonathan Levy
Regional Attorney

Attachment

cc: Sonja J. Woodward

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8387
Fax: (916) 327-6377



April 12, 2011

Aminah Walker

Re: *Aminah Walker v. California School Employees Association & its Chapter 724*
Unfair Practice Charge No. LA-CO-1449-E
WARNING LETTER

Dear Ms. Walker:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on September 3, 2010. Aminah Walker (Walker or Charging Party) alleges that the California School Employees Association, Chapter 724 (CSEA or Respondent) violated the Educational Employment Relations Act (EERA or Act).¹

FACTUAL BACKGROUND

Charging Party's Position

Charging Party is employed as a school bus driver for the San Diego Unified School District (Employer or District). In November 2008, Charging Party became an active member and steward for Respondent. In 2009, Charging Party was elected as a conference delegate on behalf of Respondent. Charging Party was also involved with Respondent's Constitution and Bylaws Committee. At some point, Charging Party "noticed the leadership was making up rules about how our chapter business is conducted," and began referring Respondent's leadership to the Constitution and Bylaws when discrepancies arose.

Charging Party "started noticing [Respondent's agent] Leticia Munguia (Munguia) make personal attacks towards [her] by stating in Steward Council Meetings, Executive Board Meetings, and Chapter Meetings," that Respondent's leadership should be concerned by Charging Party's references to the "Constitution and Bylaws, Job Steward modules, and Site Representative modules."

In December 2009, Charging Party raised concerns about the Release Time Program because she believed that the amount of money allocated to this chapter did not align with the treasurer's report. After expressing those concerns, Munguia, "became very defensive and accusing me of trying to get her fired. . . ."

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

In January 2010, Charging Party sent Respondent President Allen Clark (Clark) a 41-page document, which included correspondence between Munguia and Charging Party, to express her concerns over the release time allocations. Clark responded, "Aminah you are referring to the state constitution not your chapter. The exec. Board meeting is not an open meeting and your eboard is following procedures. I am trying to understand why you are challenging everything that they do. We have checked into every complaint and have found no wrong doing. . . ." Charging Party states that Clark's lack of interest concerned her because he did not receive any of the documentation that she sent him before "he became judgmental towards me."

In January 2010², Munguia's "attitude and demeanor changed towards" Charging Party. Charging Party states that Munguia:

did everything she could to sabotage my character, integrity, and abilities to perform as a job steward by influencing the chapter leadership to bring about false charges³ with no evidence to support alleged accusations. I was removed from my appointed duties as Site Representative Coordinator and Job Steward without any of the allegations being substantiated. By removing me impacted the trust and respect of the union to display favorable representation. Members now have no trust in CSEA because all unbiased representatives are being falsely accused, removed from their offices, and forced to resign due to lack of support from the LRR and chapter leadership.

In April 2010, Munguia notified the Human Resources Department at the District that Charging Party had been removed as job steward before the term ended. Charging Party states that, "[t]he [contact] was used for her own personal vendetta against me for representing members truthfully and honestly. [Munguia] influence and intimidate the [District] Management and CSEA staff because of their lack of knowledge on the in/out of labor laws."

In April 2010, Dorothy Franklin (Franklin) and Charging Party attempted to organize the Food Service Workers, "only to [be] blocked and discriminated against by Food Service Manager Gene Robinson (Robinson). Who later stated in an email, he received orders from CSEA." Charging Party states that Robinson's e-mail message was generated throughout the District and that it formulated negative and biased opinions towards Franklin and Charging Party.

Charging Party states that, "[t]he grievance against [Robinson], to my knowledge is pending. After making several attempts requesting counsel, I have not received any counsel from [Munguia]."

² The charge states "2009," but presumably Charging Party intended to write "2010."

³ Charging Party did not provide any detail about these "false charges."

Charging Party states that on a number of occasions Munguia has coached District management in what policies and procedures to use to "embark the outcome in their favor."

Charging Party states that Respondent:

[D]id allow the membership a platform to discuss the contract ratifications, and Health and Welfare ratifications. All negotiations were decided without any membership input. The membership was not allowed any time to discuss concerns in a group setting prior to the opening of polls.

Additionally, Charging Party states that:

Through my involvement as a Union Representative, my spouse William Thomas have been harassed and treated unfairly, falsely accused, and not giving due process in his representations from [Munguia]. The Secretary discriminated against William when she singled him out by violating the HIPPA ACT by contacted his doctor.

Respondent's Position

Respondent asserts that: a number of Charging Party's allegations are barred by the statute of limitations; are outside of PERB's jurisdiction as they relate to internal union affairs; and that Charging Party fails to meet its burden of providing a clear and concise statement of facts rather than mere legal conclusions.

DISCUSSION

The undersigned Board Agent understands Charging Party's charge as consisting of the following allegations: (1) Munguia made personal attacks towards Charging Party during union meetings; (2) Charging Party's concerns regarding allocations of money to the Release Time Program were largely ignored; (3) Munguia's attitude and demeanor changed towards Charging Party and Munguia influenced Respondent to bring about false charges against her; (4) Charging Party was removed from her position as steward; (5) Munguia notified District's Human Resources Department that Charging Party was no longer a steward for Respondent; (6) Respondent gave Food Service Manger Robinson orders to block/discriminate against Charging Party and Robinson's e-mail message generated negative and biased opinions towards Charging Party; (7) Respondent failed to provide Charging Party with representation for a grievance filed against Robinson; (8) membership was not allowed any time to discuss concerns in a group setting prior to the opening of polls; and (9) Charging Party's spouse has been harassed, falsely accused, not given due process in his representations from Munguia, and his HIPPA Act rights were violated.

A. Charging Party's Burden

PERB Regulation 32615(a)(5)⁴ requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

The charging party's burden also includes alleging facts showing that the unfair practice charge was timely filed; i.e., that the alleged unfair practice occurred no more than six months prior to the filing of the charge. (*Los Angeles Unified School District* (2007) PERB Decision No. 1929; *City of Santa Barbara* (2004) PERB Decision No. 1628-M.) PERB is prohibited from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.) The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177.) Additionally, PERB Regulation 32615(a)(4) requires a charging party to provide:

The sections of the Government Code and/or, under MMBA, Article 3 of the Trial Court Act, or the Court Interpreter Act, the applicable local rules, or the sections of the Public Utilities Code, alleged to have been violated.

Charging Party's charge alleges that Respondent violated Government Code sections, "3542.1; 3543.1 a-d; 3543.2 a-e; 3543.5 a-d; 3543.6 a-d; 3544.9; 3546.5; 3548; and 3569." Charging Party's charge fails to allege the appropriate sections of the EERA that Respondent allegedly violated. The Board has held that, where a charging party fails to allege that a section of the Government Code has been violated, the Board agent, upon a review of the charge, may determine under what section the charge should be analyzed. (See *Los Banos Unified School District* (2007) PERB Decision No. 1935; *Los Angeles County Office of Education* (1999) PERB Decision No. 1360.)

B. Statute of Limitations

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." As noted above, the limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint*

⁴ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Community College District, supra, PERB Decision No. 1177.) A charging party bears the burden of demonstrating that the charge is timely filed. (*Tehachapi Unified School District* (1993) PERB Decision No. 1024; *State of California (Department of Insurance)* (1997) PERB Decision No. 1197-S.)

Charging Party filed this charge with PERB on September 3, 2010. This filing date establishes that allegations concerning conduct occurring before March 3, 2010, may not be considered by PERB because they are outside of the six month statute of limitations period.

Based on the facts provided by Charging Party, allegations (1) – (4) as listed above, occurred before March 3, 2010, and thus cannot be considered by PERB and are therefore dismissed. The remainder of Charging Party's allegations appear to be timely and will be discussed below.

(5) *Notification to District – Removal of Charging Party as Steward*

Charging Party provides that:

April of 2010, [Munguia] notified the Human Resource Department of my removal as Job Steward before the term ended. The contract [presumably meant to be "contract"] was used for her own personal vendetta against me for representing members truthfully and honestly.

While no analysis or allegation of a specific EERA section violation was provided, it appears from the charge that Charging Party is asserting a duty of fair representation violation under EERA section 3544.9 and thereby section 3543.6(b). In order to state a prima facie violation of this section of EERA, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory, or in bad faith. The charge does not allege that the District was provided with the reasons why Charging Party was removed as steward or any other detail that would reflect poorly on Charging Party. Respondent states that according to the collective bargaining agreement (CBA) Article 3, section 1(C), Respondent is responsible for providing the District with a list of all officers, including stewards. Respondent states that after Charging Party was removed, it merely updated the list and submitted the list of officers and stewards to the District. As written, Charging Party fails to establish a violation of the duty of fair representation.

To the extent that this allegation relates to internal union affairs, Charging Party fails to demonstrate that harm or injury was caused to the employer-employee relationship because of Respondent's submittal of the updated representation list. (*California School Employees Association and its Local Chapter No. 616 (Tornetta)* (1985) PERB Decision No. 508.⁵)

⁵ In comparison, the Board has intervened in the internal affairs of a union when alleged union reprisals against members substantially impacted the employment relationship. For example, in *California Union of Safety Employees (Coelho)* (1994) PERB Decision No. 1032-

(6) *Robinson's E-mail Message*

As noted above, Charging Party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)*, *supra*, PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)*, *supra*, PERB Decision No. 944.) Charging Party does not provide many details regarding the incident with the Food Service Department.

Respondent provides that Charging Party went to the Food Service Department during working hours to talk with members who were on duty.⁶ Neither Charging Party nor Franklin held any official position for Respondent during this time. Workers from Food Service complained to Respondent's vice president and manager Derek Howard about Charging Party's visit at their department. Howard then contacted Respondent President Larkins who informed Robinson that Charging Party and Franklin were not at Food Service on official business. That was communicated in order to protect Respondent's relationship with the District. In its response, Respondent points to specific procedures for visiting a campus, checking in, and only making contact with members before and after school or on a break with a manager's approval. Robinson's e-mail message stated that Charging Party was not permitted to be in Food Service unless she was investigating a grievance. Respondent states that it did not dictate the terms of the e-mail message sent by Robinson or have any control over its content. Respondent also states that it cannot be responsible for Robinson's e-mail message because he is a manager for the District and was not acting with or on behalf of Respondent.

In this case, Charging Party fails to demonstrate a violation of EERA based on this factual allegation. Charging Party does not provide any detail as to what was actually communicated in Robinson's e-mail message. Based on the duty of fair representation analysis presented above, it does not appear that Respondent acted in an arbitrary, discriminatory, or bad faith manner.

(7) *Grievance Against Robinson*

Charging Party's entire statement relating to the grievance against Robinson provides:

S, the union filed a citizen's complaint against an employee with his employer, causing the employer to initiate an investigation of the employee's conduct. In finding a violation, the Board held that the union's conduct directly and substantially impacted the employee's employment relationship with his employer.

⁶ Absent a factual dispute, a Board Agent may rely on information that does not appear in the charge, including information provided by the Respondent. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

The grievance against Gene Robinson, to my knowledge is pending. After making several attempts requesting counsel, I have not received any counsel from [Munguia].

Charging Party, again, fails to meet her burden of providing a clear and concise statement of facts and conduct to demonstrate that an unfair practice has occurred. Respondent provides that Charging Party sent an e-mail message to the District stating, "she did not want [Munguia] to have anything to do with her grievance" against Robinson. According to the CBA, members can represent themselves through Level II of the grievance process. As written, Charging Party has failed to provide facts demonstrating that Respondent violated its duty of fair representation by acting arbitrarily, discriminatorily, or in bad faith.

(8) *Membership Not Provided Time to Discuss Contract Ratifications*

Charging Party's entire allegation concerning membership's discussion of contract issues provides:

[Munguia] and President Larkins did [presumably meant to allege "did not"] allow the membership a platform to discuss the contract ratifications, and Health and Welfare ratifications. All negotiations were decided without any membership input. The membership was not allowed any time to discuss concerns in a group setting prior to the opening of the polls.

Charging Party does not provide a sufficient amount of detail to demonstrate that an unfair practice occurred. As it appears in the charge, this matter is an internal union affair and is therefore outside of PERB's scope.

Generally, PERB will not review matters concerning internal union affairs unless they have a substantial impact on the relationship of unit members to their employer so as to give rise to the duty of fair representation. (*Service Employees International Union, Local 99 (Kimmitt)* (1979) PERB Decision No. 106 [holding that only such activities that have a substantial impact on the relationships of unit members to their employer are subject to the duty]; see also, *California State Employees Association (Hutchinson, et al.)* (1998) PERB Decision No. 1304-S [noting that PERB has traditionally refrained from reviewing the internal affairs of unions]; *California State Employees Association (Hard, et al.)* (1999) PERB Decision No. 1368-S [holding that, "PERB's function is to interpret and administer the statutes which govern the employer-employee relationship, not to police internal relationships among various factions within employee organizations ... internal union disputes are more appropriately presented in a different forum"]; *California State Employees Association (Gonzalez-Coke, et al.)* (2000) PERB Decision No. 1411-S [holding that charging parties fail to meet their threshold burden when no factual evidence of impact on the employer-employee relationship is provided in the charge].)

(9) *Retaliation Against Charging Party's Spouse*

Charging Party's entire allegation regarding retaliation against her spouse provides:

Through my involvement as a Union Representative, my spouse William Thomas have been harassed and treated unfairly, falsely accused, and not giving due process in his representation from [Munguia]. The Secretary discriminated against William when she singled him out by violating the HIPPA ACT by contacted his doctor.

As written, Charging Party fails to provide a sufficient level of factual detail to demonstrate that an unfair practice has occurred. As stated above, Charging Party has the burden of alleging the "who, what, when, where and how" of an unfair practice. (Citations omitted.)

Additionally, it is not clear if Charging Party has standing to allege unfair practice allegations on behalf of her spouse. The United States Supreme Court stated, "... the question of standing depends upon whether the party has alleged such a 'personal stake in the outcome of the controversy,' [citation omitted] as to ensure that 'the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.'" [Citation omitted.] (*Sierra Club v. Morton* (1972) 405 U.S. 727 at p. 732.) The Board has also held that an individual employee does not have standing to challenge the violation of another employee's rights. (*United Teachers of Los Angeles (Hopper)* (2001) PERB Decision No. 1441.)

CONCLUSION

For these reasons the charge, as presently written, does not state a prima facie case.⁷ If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by an authorized agent of Charging Party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the Respondent's representative and the original proof of service must be filed with PERB.

⁷ In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

If an amended charge or withdrawal is not filed on or before April 22, 2011,⁸ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Jonathan Levy
Regional Attorney

JL

⁸ A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)